IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.513 OF 2007

Ganesh Construction Company ..Applicant.
Vs.
Radha Mohandas Tejwani ..Respondent.

WITH
CIVIL REVISION APPLICATION NO.514 OF 2007

Ganesh Construction Co. ..Applicant.
V/s.
Smt. Vasumant Anilkumar Hemani ..Respondent.

WITH
CIVIL REVISION APPLICATION NO.515 OF 2007

Ganesh Construction Co. ..Applicant.
V/s.
Shri Vasant L. Dedhia ..Respondent.

WITH
CIVIL REVISION APPLICATION NO.516 OF 2007

Ganesh Construction Co. ..Applicant.
V/s.
Shri L.G.Rao,
Since deceased, through his L/Rs
Girish Waman Rao & Ors. ..Respondents.

WITH
CIVIL REVISION APPLICATION NO.517 OF 2007

Ganesh Construction Co. ..Applicant.
V/s.
Shri Tufani Raghunath Gupta ..Respondent.

WITH
CIVIL REVISION APPLICATION NO.518 OF 2007

Ganesh Construction Co. ..Applicant.
V/s.
G.J.Ramgamdani ..Respondent.

WITH
CIVIL REVISION APPLICATION NO.519 OF 2007

Ganesh Construction Co. ..Applicant.
V/s.
Smt. Surekha Vasant Raul ..Respondent.

WITH
CIVIL REVISION APPLICATION NO.520 OF 2007

Ganesh Construction Co. ..Applicant.
V/s.
Shri N.S.Nimbkar ..Respondent.

Mr.S.K.Shinde alongwith Mr.Sagar Kasare, advs. for the Applicant.

Mr.Ambar Joshi, adv. for the Respondents.

CORAM : J.H.BHATIA, J.
DATE : NOVEMBER 23, 2007.

P.C.:

1. All these eight applications are filed by the original plaintiff, which is a partnership firm. Respondents in each of these applications are the original defendants. They are occupying tenements in Amar Bhavan, House No.131 situated at Kalwa, Thane originally belonging to one Dhanibai and her sister Vithabai. Each of these two sisters had 50% share in the suit property. After death of Vithabai, her legal heirs became the co-owners of the said property to the extent of 50%. It is the case of the plaintiff that in 1987 it had entered into an agreement with Dhanibai and legal heirs of Vithabai whereby they had agreed to sell the said building/property to the plaintiff firm. Development rights were also given to the plaintiff under the same agreement. On the basis of that agreement, some development was carried out and

construction was made. There are large number of tenants occupying different tenements in Amar Bhavan. They were not paying rent since 1982. According to the plaintiff right to recover the rent was also given to it under the said agreement. In spite of this, the tenants never paid rent to the plaintiff, after 1987. On 25-5-1993 Dhanibai made a will and bequeathed her 50% share in the said property to one Ankush Waman Shilkar. Dhanibai died in 1997. The said Ankush also obtained letter of administration on the basis of that will. He is a partner of the plaintiff firm. Plaintiff firm filed a suit for specific performance of the agreement against the legal representatives of Vithabai in respect of their 50% share in the property. On 8-3-2000 that suit was decreed. However, defendants in that suit had preferred an appeal before this High Court and the operation and execution of the decree was stayed by this Court.

2. Thereafter the Plaintiff firm filed the suits for eviction in the year 2001 against the different tenants residing in different tenements in the said property. Eight of these suits filed against the defendants/respondents came to be dismissed while the remaining suits are said to be pending. Against the dismissal of eight suits against the respondents, the plaintiff preferred appeals. Those appeals were also

dismissed by the IInd Additional District Judge, Thane as per the common judgment dated 18-3-2006. Being aggrieved by dismissal of the suits and the appeals, the plaintiff has preferred these revision applications before this Court.

3. It is the contention of the plaintiff that one of its partners namely, Ankush Shilkar has become owner of the 50% of the property by virtue of the will executed by Dhanibai. Dispute is regarding 50% share of Vithabai and her legal heirs. Thus, according to the plaintiff, it has become co-owner of the property. Under the agreement of 1987, right to collect the rent has been given to the plaintiff and, therefore, the plaintiff has become the landlord and atleast it being co-owner of the property, it is the landlord and, therefore, it is entitled to recover the rent and due to failure of the tenants to pay rent, it is also entitled to file suit for eviction. On the other hand, it is contended on behalf of the defendants/respondents that the decree passed in favour of the plaintiff in the suit for specific performance of the agreement is in respect of 50% share of Vithabai has been stayed and as long as decree is stayed and not executed, the plaintiff can not claim to be the landlord and it can not file suit for eviction against the tenants.

4. Heard the learned counsel for the Parties. It appears from the plaints that the suits for eviction are filed on the basis of the agreement, which was entered into between the plaintiff on one hand and Dhanibai and legal heirs of Vithabai on the other hand in the year 1987 for sale of the property and for transfer to development rights. Even though the plaintiff claims to have made some development on some of the open land, the dispute in the present suits pertains to the building, which was already in existence and which is occupied by different tenants. Under Section 7(3) of the Maharashtra Rent Control Act, 1999, the landlord means any person, who is for the time being, receiving, or entitled to receive, rent in respect of any premises whether on his own account or on account, or on behalf, or for the benefit of, any other person. From this it is clear that either such person should be receiving the rent or should be entitled to receive the rent. The learned counsel for the plaintiff conceded that plaintiff was never receiving the rent. The defendants had stopped paying the rent since 1982, i.e., long before the plaintiff allegedly entered into an agreement for development and sale with Dhanibai and others. After that agreement also, the tenants never paid rent to the plaintiff. To make the plaintiff landlord , it is necessary to show that it is entitled to receive the rent. The learned

Courts below noted that the agreement does not specifically confer the right to recover the rent on the plaintiff. Admittedly after execution of agreement of 1987, none of the defendants attorned the tenancy in favour of the plaintiff. In such circumstances, the plaintiff can claim to be the landlord only when it becomes entitled to receive the rent and that is possible only when it becomes owner of the property or property is conveyed to it by any other agreement as per the law.

5. According to the plaintiff, 50% share of Dhanibai has been bequeathed to Ankush Shilkar, who is one of the partners of the plaintiff firm. It appears that the plaintiff firm does not have any dispute with Ankush Shilkar in respect of 50% shares and, therefore, the suit for specific performance of the agreement was filed only against the legal heirs of Vithabai. As pointed out earlier, the suit for specific performance was filed in 1997 and it was decreed on 8-3-2000 but that decree has been stayed in the appeal filed by the defendants. That decree still remains stayed because the appeal is pending. These suits for eviction came to be filed in the year 2001. Admittedly in respect of 50% share of Vithabai, sale deed has not been executed because of the stay to the decree. Only if the stay is vacated and the decree is executed, the plaintiff can

claim 50% share of Dhanibai in the said property. As of today, since such decree is not yet executed, the plaintiff can not lay any claim to the extent of that 50% share atleast for the purpose of seeking eviction against the tenants. It is material to note that the suit for eviction is not filed by Ankush Shilkar, who is said to have received 50% share of Dhanibai. If the suit would have been filed by Ankush Shilkar, as he is said to have become co-owner of the property alongwith legal heirs of the Vithabai, matter could be different However, in the present suit, Ankush Shilkar is not the plaintiff in his individual capacity. On careful perusal of the plaint, it becomes clear that the plaintiff has nowhere pleaded that the said Ankush Shilkar has transferred that 50% share in favour of the firm. In absence of such pleading, the plaintiff can not claim to have become co-owner of the property alongwith the legal representatives of the Vithabai and it also can not claim to have right to receive the rent from the tenants and, therefore, it can not claim to have become the landlord within the meaning of Section 7(3). If it is so, the plaintiff also can not file suit for eviction and recovery of rent.

6. The learned counsel for the plaintiff placed reliance upon **Jainuddin Abdul Rehman Shaikh v. Sitaram Damodar Varvadkar and Others 1981 Maharashtra Law**

Journal 498 in support of his contention that the co-owner can file suit for recovery of rent and also for the eviction against the tenants without joining the other co-owner. In the case of **Jainuddin**, the learned Single Judge had referred to the following observations of the Supreme Court in **Shri Ram Pasricha v. Jagannath and Ors AIR 1976 SC 2335** and **Smt. Kanta Goel v. B.P.Pathak and Others AIR 1977 Supreme Court 1599.**

> "It is only the landlord who can terminate the tenancy and institute the suit for eviction. The tenant in such a suit is estopped from questioning the title of the landlord under section 116 of the Evidence Act. The tenant cannot deny that the landlord had title to the premises at the commencement of the tenancy. Under the general law, in a suit between landlord and tenant the question of title to the leased property is irrelevant."

The learned Single Judge also referred to following observations in **Shri Ram Pasricha v. Jagannath** and Ors. (Supra).

> "Jurisprudentially it is not correct to say that a co-owner of a property is not its owner. He owns every part of the composite property along with others and it cannot be said that he is only a part-owner of the property. The position will change only when partition takes place. It is, therefore, not possible to accept the submission that the plaintiff who is admittedly the landlord and co-owner of the premises is

> not the owner of the premisses within the meaning of section 13(1)(f). It is not necessary to establish that the plaintiff is only owner of the property for the purpose of section 13 (1)(f) as long as he is a co-owner of the property being at the same time the acknowledged landlord of the defendants."

In view of this, it can be safely held that the co-owner can file suit for eviction. When such suit is filed, it is presumed that he files the suit for himself as well as on behalf of and for other co-owners. However, when there are serious disputes between the co-owners, a question may arise whether one co-owner, who files the suit in the Court can claim to represent the other co-owners. After referring to above observations in **Shriram Pasricha**, in the case of **Smt. Kanta Goel**, Their Lordships also made following observations.

> "We are not called upon to consider the piquant situation that might arise if some of the co-owners wanted the tenant to continue contrary to the relief claimed by the evicting co-owner."

After referring to these authorities, the learned Single Judge in the case of **Jainnudin** observed that if one of the co-owners requires the premises reasonable and bonafide for personal use, he can also file suit even without consent of the other co-owner.

7. In the present case, there is serious dispute between the plaintiff and the legal representatives of Vithabai, who are the owners of 50% share in the whole of the property. The plaintiff had already filed suit against them and that litigation is pending therefore, when the plaintiff filed suits in the year 2001, it could not claim to be representative of the legal representatives of Vithabai. The plaintiff has also not filed the suit for bonafide personal use of the property. Besides this, as pointed out earlier, there is no document nor even any pleading that the plaintiff has become owner of atleast half of the share of the property and, therefore, merely because Ankush Shilkar, who is one of the partners of the firm claims to have become owner of the share of Vithabai, the plaintiff can not claim to have become co-owner of the property.

8. The learned counsel for the plaintiff/applicant contended that Ankush Shilkar is bound by the agreement of 1987 because Vithabai had entered into an agreement in favour of the plaintiff and Ankush Shilkar claims to have received share of Dhanibai under her will. Even

if it is so, neither Ankush Shilkar is party to the suit for specific performance of the agreement nor Ankush Shilkar is party to the present suits and as pointed out earlier, pleadings in the plaint nowhere shows that Ankush has transferred 50% share in the property in favour of the plaintiff therefore, there is no force in this argument.

9. Taking into consideration the circumstances, I find no fault in the dismissal of the suits and the appeals filed by the present applicants. There is no substance in the revision applications. In the result, all these revision applications stand dismissed.

[J.H.BHATIA, J.]